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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Phoenix Intangibles Holding Company

Serial Number 75/449,294

David V. Radack for Phoenix Intangibles Holding Company.

Ingrid C. Eulin, Trademark Examining Attorney, Law Office
111 (Craig Taylor, Managing Attorney).

Before Seeherman, Hanak and Hairston, Administrative
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Phoenix Intangibles Holding Company (applicant)
seeks to register RIVER CITY CHICKEN COMPANY in typed
drawing form for "supermarket services, namely, a
supermarket providing prepared chicken." The application
was filed on March 12, 1998 with a claimed first use date
anywhere and in interstate commerce of March 1995.

The Examining Attorney has refused registration
pursuant to Section 2(d) of the Trademark Act on the
basis that applicant's mark, as applied to applicant's
services, is likely to cause confusion with the mark

RIVER CITY, previously registered in typed drawing form for "wholesale distributorship featuring meat and fish products."

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Registration No. 2,056,687 issued April 29, 1997.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods or services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Considering first the marks, we note at the outset that applicant, at the request of the Examining Attorney, disclaimed the exclusive right to use CHICKEN COMPANY. However, in comparing marks it is important to remember that we are obligated to compare the marks in their entireties, including any matter which is disclaimed and/or descriptive. American Home Products v. B.F. Ascher, 473 F.2d 903, 176 USPQ 532, 533 (CCPA 1973).

While the CHICKEN COMPANY portion of applicant's mark is

descriptive of its services, nevertheless, it causes applicant's mark in its entirety (RIVER CITY CHICKEN COMPANY) to be at least somewhat different from the cited mark RIVER CITY in terms of visual appearance, pronunciation and meaning.

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Turning to a consideration of applicant's services and registrant's services, one very critical proposition must be kept in mind, namely, that in order for there to exist even the possibility of a likelihood of confusion, applicant's services and registrant's services must be marketed to common customers. Electronic Design & Sales v. Electronic Data Systems, 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992). Obviously, virtually every American consumer above the age of ten partakes of supermarket services (applicant's services). However, only a very limited percentage of American consumers would partake of wholesale distributorship services featuring meat and fish products (registrant's services). These consumers would be the owners or purchasing agents of supermarkets, restaurants and the like. Of course, the owners and purchasing agents of supermarkets and

restaurants are also consumers of supermarket services. However, they are a tiny percentage of the overall consumers of supermarket services.

Thus, the only common customers of applicant's supermarket services and registrant's wholesale distributorship services featuring meat and fish products are a tiny percentage of the American public, namely, owners

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and purchasing agents of supermarkets and restaurants. Hence, only a very tiny percentage of the American public (owners and purchasing agents of supermarkets and restaurants) would ever be exposed to both applicant's mark and registrant's mark and thus would ever be in a position to possibly experience confusion.

Moreover, even with regard to this tiny percentage of the relevant purchasing public (owners and purchasing agents of supermarkets and restaurants), we note that these are individuals who, when it comes to dealing with food items, are sophisticated and knowledgeable and hence would easily distinguish between applicant's mark RIVER CITY CHICKEN COMPANY and registrant's mark RIVER CITY.

As our primary reviewing Court has made clear, purchaser "sophistication is important and often dispositive because sophisticated consumers may be expected to exercise greater care." Electronic Design & Sales, 21 USPQ2d at 1392. Accordingly, we find that there is no likelihood of confusion.

Before concluding, we would be remiss if we did not note that the Examining Attorney has made of record about half a dozen third-party registrations where the same marks were registered for wholesale and retail distributorship

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services featuring various food items. However, these third-party registrations do not demonstrate that the common customers of applicant's and registrant's services are not sophisticated when it comes to food items.

Decision: The refusal to register is reversed.

